

Remarks

Claim 1 has been amended to recite that a lathering surfactant in an amount of about 1.0 to about 10.0% by weight is present in said composition. Support for lathering, and the amount thereof of 1.0 to about 10% by weight can be found at page 13 lines 1-7 and elsewhere throughout the specification. Claims 1-4, 6-13 and 17-18 remain in the case.

The applicant's invention is directed to compositions for topical application to the skin providing a barrier for toxic agents, as for example used in the hair dressing industry, which are readily removable by water. The compositions comprise a cosmetic vehicle or base and about 1.0 to about 10% by weight of a lathering surfactant.

The Examiner's objection to claim 15 has been mooted by cancellation of that claim.

The rejection of claims 1-4, 6-12, 14, 15, 17 and 18 as anticipated by Noll (35 U.S.C. 102 (b)) and in particular the Examiner's reliance on Noll as "contain(ing) 15-40% of alkali metal fatty acid" (e.g. sodium laurate) which inherently possesses surface-active properties is not well taken and is an assumption made by the Examiner which is not supported by the Noll reference.

Noll does teach protective creams containing 15 to 40 wt% of an alkali metal fatty acid salt in addition to a bioactive agent, an alkali metal silicate and water, (Column 11, Line 65-column 12, line 18).

The Examiner's attention is called particularly to the Noll disclosure that the alkali metal salt of a fatty acid is used to provide water repellency.

In complete contrast, the applicant employs a surfactant (surface active agent), a compound that reduces the surface tension of liquids, or reduces interfacial tension between two liquids. It does not provide water repellency, in fact in the case of the application, it does the opposite of providing water repellency, it ensures the ready removability of the protective composition. At pages 11-12 of the application, the applicant recites it was not known heretofore to combine the barrier protectant composition with a surfactant and preferably a lathering surfactant to facilitate removal of the barrier composition. The surfactant in addition to its usual properties as a surface active agent, i.e. lowering the surface tension of liquids, will add an exfoliating and cleansing action to the preparation and will optimize the consistent deposition of the bioactive agents and the conditioning agents if the latter are present. If a lathering surfactant is used, it is a surfactant which when combined with water and the agitated, generates a foam or lather. The surfactant facilitates the removal of the cream, gel, or film only, water being required.

It is also noted that the lathering surfactant is present in a amount of from about 1-10% while in Noll the fatty acid salt is present in amounts of from "between 15 and 40 wt%, especially between 20-30 wt% of the surface coating composition."

The instant specification lists at pages 13-14 a wide variety of lathering surfactants, alkali metal salts of fatty acids are not among them as they would not be suitable. Sodium lauryl sulfate is, as it is an anionic detergent, which lowers the surface tension of aqueous solutions, emulsifies fats... (See the Merck Index, Tenth Edition, Page 8479).

The Noll patent neither teaches or suggest the use of a lathering surfactant and clearly does not teach the use of an alkali metal fatty acid salt as a surfactant but only for its use for providing water and chemical repellency. Noll does not teach the invention.

The addition of Kelly, et al (Claim 13) and Guck (claims 5 and 16) to Noll in the rejection of the noted claims as unpatentable under 35 U.S.C. 103, is not well taken as these claims are directed to preferred features. In view of the failure of Noll to teach the basic inventive concept, i.e., of the inclusion of a lathering surfactant for facilitating removal of the composition from the skin is missing. The teaching of a preferred feature by Kelly would not result in a teaching of the invention. It further would not be obvious to substitute the surfactants of Guck for the water repellent compounds used by Noll, i.e. Noll teaches away from the use of such surfactant compounds.


In view of the above, reconsideration and allowance of the claims in the case are respectfully requested.

Request for Extension of Time

It is respectfully requested that a one month extension of time be granted applicant to respond to the outstanding office (June 5, 2003)

The fee for this request is enclosed.

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